IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2017

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THE HONOURABLE Mr.JUSTICE M.SUNDAR

Review Application No.71 of 2007

in W.P.No.35621 of 2005

&

W.P.No.19165 of 2007

Review Appl.No.71 of 2007:

N.Mohanam ... Petitioner

Vs.

1. Tamil Nadu State Scrutiny Committee
Adi Dravidar Welfare Department,
Chennai 600 009.

2.The District Collector,
Chennai.

3.Oil and Natural Gas Corporation Limited
Southern Sector, Chennai
rep.by GM/Basin Manager,
Cauvery, Chennai.

... Respondents

W.P.No.19165 of 2007:

N.Mohanam ... Petitioner

-vs-

1.Chairman-cum-Managing Director
(Appellate Authority)
O.N.G.C., Tel Bhavan,
Deharadun, Uttar Pradesh.

2.Oil and Natural Gas Corporation Limited
Southern Sector, Chennai
rep.by GM/Basin Manager,
Cauvery, Chennai. ... Respondents

Prayer in Review Application No.71 of 2007:

Review application has been filed to review the order passed in W.P.No.35621 of 2005, dated 09.01.2007.

Prayer in W.P.No.19165 of 2007 :

Writ petition has been filed under article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.36733(3)/SCRO/E-111 dt. 02.11.2005 issued by the second respondent as confirmed in the proceedings file Ref.MD/05, dated 23.10.2006 issued by the first respondent and to quash the same and direct the second respondent to reinstate the petitioner with all attendant benefits.

For Petitioner in
Rev.Appl.No.71/07 : Mr.B.Ravi for
& W.P.No.19165 of 2007 : Mr.R.Subramanian

For Respondents 1 & 2
in Rev.Appl.No.71/07 : Mr.Gunasekaran, AGP

For Respondent-3 in
Rev.Appl.No.71/07 &
Respondent-2 in
W.P.No.19165 of 2007 : Mr.M.Vijayan for
M/s. King & Patridge

For Respondent-1 in
W.P.No.19165 of 2007 : No Appearance

COMMON ORDER

1. Matter pertains to community certificate of Schedule Tribes.

2. Review Petitioner is writ petitioner in the order that is being sought to be reviewed and he is also the writ petitioner in the tagged writ petition. Therefore, Review Petitioner is referred to as writ petitioner for the sake of convenience and clarity. Writ petitioner was originally appointed as Khalasi Grade-III in Oil and National Gas Corporation [hereinafter referred as 'ONGC' for brevity], his probation was declared way back on 28.10.1985, he was also upgraded and promoted up to the level of Operator Grade-II.

3. It is the writ petitioner's case that he belongs to Hindu/Konda Kapus community, which is a Schedule Tribe in Tamil Nadu as per Presidential notification [hereinafter referred as 'said community' for the sake of clarity].

4.While in service, an issue was raised with regard to whether the writ petitioner belongs to Schedule Tribe community at all.

5. Pursuant to such an issue being raised, the matter travelled to the Scrutiny Committee.

6. The Scrutiny Committee passed an order dated 27.06.2005 [being proceedings No.22394/ADW-II/2000].

7. The above mentioned order of the Scrutiny Committee is to the effect that the writ petitioner has failed to prove his community status. In other words, the Scrutiny Committee rendered a finding to the effect that the writ petitioner has failed to establish that he belongs to the said community. Therefore, the Scrutiny Committee cancelled the community certificate issued by the jurisdictional Revenue authorities. However, the Scrutiny Committee clearly opined that the appellant need not be terminated from service since his basic appointment in the year 1984 was not based on the fact that he belonging to said community. It further opined that concessions if any obtained by the writ petitioner from ONGC, shall be cancelled.

8. However, employer/ONGC, terminated the writ petitioner by an order dated 02.11.2005.

9. Aggrieved, the writ petitioner filed W.P.No.35621 of 2005 assailing the above said proceeding of the Scrutiny Committee dated 27.06.2005. While the writ petition was pending, on 31.10.2006, the writ petitioner moved an amendment application by way of a miscellaneous petition. The miscellaneous petition is WMP.No.18343 of 2006. Prayer in the miscellaneous petition is to add one more limb to the main prayer. The writ petitioner besides assailing the above said order of the Scrutiny Committee dated 27.06.2005, wanted to amend/expand/widen the prayer, assailing the order of termination of ONGC dated 02.11.2005 also with a consequential direction to ONGC to reinstate him in service with all attendant benefits.

10. The writ petitioner was heard elaborately and all the parties were heard, by a learned Single Judge of this Court.

11. By a detailed order, touching upon all aspects of the matter, this Court (another learned Single Judge) allowed the writ petition, in and by an elaborate order dated 09.01.2007. While allowing the writ petition, unfortunately, the aforesaid amendment petition being WMP.No.18343 of 2006 was lost sight of. Therefore, no orders were passed with regard to amendment/expansion/widening of the main prayer.

12. It is also submitted that this order of the learned Single Judge was carried to the Supreme Court and the Supreme Court refused to interfere Hon'ble Supreme Court dismissed the SLP being SLP (Civil) No.6374 of 2007 vide order dated 16.04.2007.

13. It is to be noticed that the order of the learned Single Judge dated 09.01.2007 was directly assailed in the Supreme Court, as the then obtaining position of law was that an intra court appeal was not available in such matters, though the position of law has changed now. Intra Court appeal in such matters was made available by judgement of Hon'ble Supreme Court dated 11.10.2011 in Dayaram's case reported in [2012] 1 SCC 333 [Dayaram vs. Sudhir Batham and Others]. This is mentioned only to complete facts and set out the then obtaining position of law, for better appreciation of this order.

14. As stated supra, the Supreme Court refused to interfere with the order of the learned Single Judge and dismissed the Special Leave Petition being SLP (Civil) No.6374 of 2007 in and by order dated 16.04.2007 as stated supra. Therefore, the order of the learned Single Judge allowing the writ petition on

09.01.2007 has attained finality and has been given complete legal quietus.

15. As set out supra, as the order of the learned Single Judge lost sight of the amendment petition, the writ petitioner moved this Court by way of writ miscellaneous petitions being WMP.Nos.18433 & 18434 of 2006. Another learned Single Judge of this Court [learned Single Judge who passed the order dated 09.01.2007 was by then no more] passed an order dated 28.03.2007 holding that relief cannot be granted by way of miscellaneous petitions, as the main writ petition was disposed of. Further, learned Single Judge had given liberty to the writ petitioner to move a review application for expanding the relief granted by this Court. Relevant portion of the said order reads as follows:

> "The prayer sought for in this miscellaneous petition cannot be granted because the main writ petition itself has been disposed of. The grievance of the petitioner that even though consequent to the order passed by this Court, he is eligible to have the termination order set aside, the same thing cannot be made by way of amendment petition. The only source open to the petitioner is to file a Review Application. Therefore, this petition is dismissed giving liberty to the petitioner to move proper Review Application for expanding the relief granted by this Court."

Pursuant to and relying upon this order dated 28.03.2007, the writ

petitioner has filed the instant Review Application being Review Application No.71 of 2007.

16. The crux and gravamen of the Review Application is that the amended/expanded/widened prayer which may be available to the writ petitioner pursuant to amendment petition has been lost sight of and that the same should now be included as the writ petitioner has not got benefits of the order inspite of succeeding comprehensively.

17. Certain developments in the interregnum need to be stated to complete the narration of facts and for better appreciation/understanding of this order. Even when the writ petition was pending, the order of termination dated 02.11.2005 was assailed by the writ petitioner before the Departmental Appellate Authority, who by order dated 23.10.2006 confirmed the order of termination.

18. Order of termination dated 02.11.2005 and the order of the Appellate Authority confirming the order of termination dated 23.10.2006 were assailed by the writ petitioner by way of a separate writ petition in W.P.No.19165 of 2007, which has been tagged along with Review Application and listed/set on

Board before me today. The same is also being disposed of by this common order, as there is no dispute between the parties that the same has become infructuous in the light of the writ petitioner being re-instated subsequently by an order dated 05.10.2007 post disposal of the writ petition by the learned single judge on 09.01.2007.

19. It is also not in dispute that pursuant to such reinstatement, the writ petitioner continued to be in service and superannuated/retired on 30.06.2016.

20. With regard to the review application, there is no quarrel that a ground for review exists as amendment WMP for widening the prayer was lost sight of by this court. The pendency of the amendment petition being W.M.P.No.18343 of 2006 was lost sight of by this Court while allowing the writ petition. Therefore, there is no disagreement between the parties that a Review Application is maintainable and that the matter has to be examined by way of a writ petition. Furthermore, this Review Application is pursuant to order of this Court dated 28.03.2011 and both counsel agree that this order has become final and that all parties are bound by this order.

21. This takes us to dealing with the merits of the Review Application.

22. Mr.M.Vijayan, learned counsel for ONGC [employer] while not disputing that a ground for examining the mater by way of review exists, would oppose the review application on merits saying that if the review application is allowed, it will amount to the writ petitioner claiming all attendant benefits for the period between 02.11.2005 [date of termination] and 05.10.2007 [date of re-instatement].

23. Therefore, the points that need to be examined are (a) whether the prayer in W.P.No.35621 of 2005 should be allowed to be expanded? (b) whether the expanded limb of the prayer also should be acceded to? And (c) whether the writ petitioner would be entitled to all attendant benefits for the period from 02.11.2005 to 05.10.2007 if (a) and (b) are acceded to?

24. Learned counsel for ONGC Mr.M.Vijayan very fairly does not oppose (a) and (b) supra being answered in the affirmative, but he opposes (c) supra being answered in favour of the writ petitioner.

25. On that basis, opposing the review application on merits, learned counsel for ONGC relied upon Kumari Madhuri Patil's case in [1994] 6 SCC 241 [Kumari Madhuri Patil and another -vs Addl. Commissioner, Tribal Development and other] and draws my attention to paragraph 13 therein. The path breaking Madhuri Patil's case, is one where the question of community certificate with regard to Schedule Tribes and the manner in which the same should be examined when a dispute is raised was dealt with in detail. In paragraph 13 fifteen guidelines were laid down by the Honourable Supreme Court and the learned counsel for ONGC draws my attention to guideline no.15 which reads as follows:

> "As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The principal etc., of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post."

26. Regarding above extracted guideline No.15, learned

counsel would submit that ONGC was correct in terminating the writ petitioner on 02.11.2005 pursuant to the opinion of Scrutiny Committee.

27. Learned counsel Mr.M.Vijayan would further submit that the Scrutiny Committee may not be correct in saying that the writ petitioner was appointed in general quota.

28. Responding to whether the writ petitioner would be entitled to attendant benefits, when he was re-instated on 05.10.2007, Mr.M.Vijayan, learned counsel for ONGSC would fairly submit that this aspect is res-integra. In other words, learned counsel Mr.M.Vijayan, would submit that in cases of this nature where there is re-instatement pursuant to the order of the Scrutiny Committee being set aside, whether the employee concerned would get attendant benefits also for the period from termination to re-instatement is not blessed with authorities. As stated herein, after fairly submitting that it is res-integra, learned counsel would submit that this court has to lay down the law on this aspect of the matter. However, in a feeble attempt to draw an analogy, learned counsel would rely upon the judgement in Kaleeswara Mills case reported in 2002 (3) LLJ 994 [Management

of Kaleeswara Mills and Others vs Presiding Officer, Labour Court and another]. Learned counsel would draw my attention to paragraphs 5, 10 and 13 of the said judgement.

29. In Kaleeswara Mills case rendered by a Division Bench of our High Court, an employee was terminated from service owing to a criminal case wherein he was facing murder charge. Subsequently, he was acquitted and reinstated.

30. In my considered view, Kaleeswara Mills case does not help ONGC as it is clearly distinguishable on facts. Kaleeswara Mills case pertains to murder charge and also criminal charges touching upon moral turpitude. One more distinguishing factor is that Kaleeswara Mills case judgement is dated 03.09.2002 but Maduri Patil's judgement of the Honourable Supreme Court which is dated 02.09.1994 has not been cited or referred to. This itself will be a clear pointer to the legal position that the proposition laid down in Madhuri Patil's case would not be in any manner applicable to Kaleeswara Mills case.

31. The instant case on hand is factually very close and identical to Madhuri Patil's case qua community certificate, its

validity and its correctness. Therefore, it would be safe to rely upon the Honourable Supreme Court Judgement in Madhuri Patil's case.

32. In Madhuri Patil's case the guidelines are to the effect that the employer would terminate an employee forthwith on the Scrutiny Committee returning a finding that the community certificate is fake or not valid for any reason. There is no reference to the attendant benefits if he is re-instated on the finding of the Scrutiny Committee being set aside. This takes us to the answer to the question as to whether a reinstated employee pursuant to the finding of the Scrutiny Committee being set aside by a High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, would be entitled to attendant benefits for the period between termination and reinstatement owing to Scrutiny Committee's findings being setting aside by High Court.

33. In this case, the findings of the Scrutiny Committee were set aside and the writ petition was allowed on 09.01.2007. In the considered opinion of this Court, the doctrine of merger operates on the writ petition being allowed on 09.01.2007. The findings of the Scrutiny Committee dated 27.06.2005, ceased to

exist and it merged with the order of this Court. It is axiomatic that the order of this court would be substituted in place of the order of the Scrutiny Committee dated 27.06.2005. In other words, the order of this Court in W.P.No.35621 of 2005 dated 09.01.2007 would operate with effect from 27.06.2005 in place of the order of the Scrutiny Committee.

34. Learned counsel for the writ petitioner would also rely on Charan Singh's case reported in 2015 (8) SCC 150 [Fisheries Department vs. Charan Singh]. Charan Singh's case is one of wrongful termination.

35. Learned counsel for writ petitioner drew my attention to paragraph 21 of the said judgement wherein, Hon'ble Supreme Court has extracted paragraph 22 of the Deepali Gundu's case reported in 2013 (10) SCC 324. The same reads as follows:

> "22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the

> source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

36. Learned counsel for ONGC would also add that during the period between 02.11.2005 and 05.10.2007 [between termination and re-instatement] the writ petitioner was under incapacity. This, in my opinion, begs the question, as doctrine of merger is operating and the incapacity stands removed not from 09.01.2007, when this court passed an order, but with effect from 27.06.2005, as Scrutiny committee's order ceased to exist. In other words, the disability/incapacity which was slapped on the writ petitioner by the Scrutiny Committee on 27.06.2005 has been set aside and therefore, there is no disability from 27.06.2005.

37. I am also taking into account the fact that the order of the learned Single Judge of this Court is one where the Supreme Court has refused to interfere vide order dated 16.04.2007 vide SLP(Civil) No.6374 of 2007.

38. Therefore, I have no hesitation in holding that the re-instatement of the writ petitioner on 05.10.2007 pursuant to the order of this court has to necessarily be with attendant benefits.

39. Owing to all that have been set out supra and in the light of the discussion supra, the following order is passed:

(i) Review Application No.71 of 2007 is allowed.

(ii) Effect of Review Application No.71 of 2007 being allowed would be that the prayer in W.P.No.35621 of 2005 now stands expanded and widened to include challenge to the termination order dated 02.01.2005 and a prayer for attendant benefits.

(iii) The effect of (i) and (ii) above would be that the prayer in W.P.No.35621 of 2005 has

been widened. In the light of the judgement, it is necessary to hold that this limb of the widened prayer is also allowed/acceded to. In other words, the expanded/widened prayer in the writ petition also stands allowed/acceded to as one is a consequence of the other.

(iv) W.P.No.19165 of 2007 is disposed off as infructuous as the writ petitioner has been subsequently re-instated on 05.10.2007, post 09.01.2007 order of this Court.

40. Review application is allowed and writ petition is disposed off all on the above terms.

41. Considering the trajectory and the nature of the matter, parties are left to bear their respective costs.

17.02.2017

smi

M.SUNDAR, J.

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Rev.Appl.No.74 of 2007
in W.P.No.35621 of 2005
& W.P.No.19165 of 2007

DATED: 17.02.2017

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